

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**APPLICATION OF GROTON WIND, LLC
NO. 2010-01**

**OBJECTION OF MARK WATSON AND THE INTERVENOR GROUP
BUTTOLPH/LEWIS/SPRING TO GROTON WIND, LLC CONTESTED
MOTION TO AMEND CERTIFICATE OF SITE AND FACILITY**

Mark Watson and the intervenor group known as Buttolph/Lewis/Spring (collectively, the ‘Intervenors’), *pro se*, hereby object to the December 4, 2013 contested motion filed by Groton Wind LLC that seeks to amend the Certificate of Site and Facility granted by the New Hampshire Site Evaluation Committee (Committee) in the above-captioned docket. In support of this objection, the Intervenors state the following:

I. INTRODUCTION

1. Groton Wind rightly avers that the Committee must determine if the original findings pursuant to RSA 162-H:16 still apply after considering the revisions to the site plan.

2. In pre-filed testimony submitted by Peter Walker, Mr. Walker argues that the revisions were "relatively minor changes to the site plans" already certificated by Committee and "therefore cannot be viewed as undermining the Committee's initial findings." (*P. Walker, pre-filed testimony 12/4/13, p 8, ln 8-12*) Mr. Walker acknowledges that the Committee made no specific findings regarding the O&M building and argues that by erecting the building in the same general vicinity as originally proposed, it is reasonable to assume the findings by the Committee were not undermined. (*P. Walker, pre-filed testimony 12/4/13, p 8, ln 14-19*)

3. Groton Wind further states in its motion that the site plan revisions were deemed "minor" by DES and that DES holds the sole authority to approve "minor" site plan revisions¹.

II. DISCUSSION

A. Misuse of DES Terminology

4. Groton Wind's characterization of the project's revisions as 'minor' and, thus, of insufficient import to trigger the Committee's review demonstrates a gross misapplication of the technical terminology used by DES when evaluating projects. Revisions to the project plans were deemed 'minor' by the DES Wetlands Bureau primarily because the changes met the measurable criteria as defined under NH Administrative Rule Env-Wt 303.03 for *Minor Projects* i.e. the changes resulted in less than 20,000 square feet of impact to jurisdictional wetlands. In addition, since the project's revisions did not exceed any of the criteria specified in NH Administrative Rule Env-Wq 1503.21(d)(1)-(8) but were within the criteria specified in NH Administrative Rule Env-Wq 1503.22 (c) DES also approved the changes as minor amendments to the existing alteration of terrain permit.

¹ Groton Wind is contradicting its prior position on a similar matter relating to the project. See Groton Wind's November 19, 2010 "Procedural Proposal" filing involving the alternative proposed overhead power line wherein Groton Wind agrees that since the alternative link may be considered to be part of the Project site, it "**must be certificated by the Committee.**" [**emphasis added**] (http://www.nhsec.nh.gov/2010-01/documents/101119app_proposal.pdf, pg 3)

5. None of the statutes and administrative rules relied on by DES in making its findings imposes the same statutory requirements as defined under RSA 162-H:16 IV. Further, a plain reading of the project's amended dredge and fill permit² and alteration of terrain permit addendum (*Groton Wind's Attachment 1 included with its December 4 motion*) substantiates this point since neither contains language that bears resemblance to that found in RSA 162-H:16 IV including reference to orderly development, aesthetics, public health and safety and others.

B. O&M Building Revisions

6. Mr. Walker insists in his testimony that the revised O&M facility did not undermine the Committee's original findings yet, his argument appears solely focused on DES-related concerns such as building footprint and setback distances from Clark Brook. He omits any discussion of the site modifications that are now negatively impacting abutting property owners. We detail several here.

a. The O&M building as approved by the Committee was to be located at least 500 feet south of an occupied residential property and behind a treed buffer that shielded the building from nearby homeowners. The as-built plans show the O&M building located on an elevated platform within 200 feet of the nearest residence. The land surrounding the existing O&M building is entirely devoid of trees³ which is in contrast to the forested buffer shown on the plans approved by the Committee.

² <http://des.nh.gov/organization/divisions/water/wetlands/decisions/2011/documents/20111211.pdf>

³ Groton Wind has since planted small landscaping trees; the as-built plans have removed the forested tree buffer that was intended in the plans certificated by the Committee.

b. It appears from the original plans that very little, if any grading would have been necessary to site the building, however, the as-built plans show significant grading giving the building the appearance of towering over nearby homes. We are aware that substantial blasting was also necessary to relocate the O&M building.

c. Relocation of the O&M building also required relocation of the filtration basin and other infrastructure needed for managing stormwater runoff. A comparison of the certificated plans and the as-built plans indicates the existing filtration basin is substantially larger than the originally proposed basin and is now located less than 50-feet from a non-participating homeowner's property.

C. Project Revision List Incomplete

7. As cited in Intervenor Watson's November 18 , 2013 response to Groton Wind's Environmental Health and Safety Plan, the project revisions also included changes to the road profiles which increased grades above 12%. (*Response of Mark Watson to Filing of Groton Wind LLC's Environmental Health and Safety Plan November 18, 2013*)⁴ There is no evidence in the record that Groton Wind notified the Committee or any of the parties to the proceeding of the changes to the road profiles prior to construction, yet Groton Wind repeatedly uses the 12-15% road grades as justification for not maintaining the project roads year-round. VHB's November 10, 2011 letter omits any discussion about road profiles. (*Groton Wind's Attachment 1 included with its December 4 motion*)

8. VHB's November 10, 2011 letter only cites two turbines as having been relocated but Groton Wind's December 4, 2013 motion now admits that as many as eight turbines were relocated.

9. The revised site plans provided by Groton Wind focus on DES-related issues and therefore leave out details that may be important to the Committee and other parties in evaluating the full impact of the

⁴ <http://www.nhsec.nh.gov/2010-01/documents/131118watson.pdf>

We respectfully ask this honorable Committee:

A. Deny Groton Wind's motion to amend the certificate to incorporate the changes described in Groton Wind's motion;

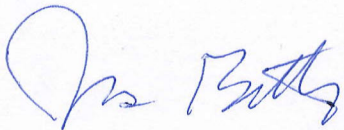
B. Grant such further relief as it deems appropriate.

Dated this day of December 16, 2013

Respectfully submitted by:

/s/ Mark Watson

Mark Watson



James Buttolph

On behalf of the Intervenor Group Buttolph/Lewis/Spring

cc: Parties to Docket 2010-01

modifications. The omissions cited in paragraphs 7 and 8 above, together with any missing detail from the as-built plans suggest there may be other modifications to the project plans that the Committee and others do not have access to.

D. Interference With Due Process Interests

10. While the plan revisions may have provided some environmental benefit by distancing the O&M building from Clark Brook or offering a limited reduction in the project's footprint, the impacts of these changes on the landscape and existing residents are startling, and in our opinion, not fully understood. The administrative rules governing amended dredge and fill and alteration of terrain permits do not require that abutters be notified of the plan changes, thus Groton Wind's failure to seek the Committee's approval has interfered with the due process interests of those impacted by the changes. As such, the parties to the proceeding as well as those who might have had opportunity to intervene were excluded from reviewing the project changes and conducting cross-examination required for a full and true disclosure of the facts (*RSA 541-A:33, IV*). Frankly, we are surprised that Groton Wind is now asking the Committee to amend the certificate without considering the due process rights of others. This is in direct contrast with Groton Wind's own statements on a related matter in this Docket. (*Groton Wind Procedural Proposal for the Remainder of the Proceeding November 19, 2010, p3*)

III. CONCLUSION

The Intervenors maintain that Groton Wind LLC has constructed, and is now operating the wind energy facility in violation of its certificate. If the Committee disagrees, we pray that the Committee refrain from amending the Certificate until an adjudicative proceeding is ordered to determine if the project's changes undermine the Committee's initial findings.